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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,203	03/03/2004	Bernarr C. Schaeffer		4198
7590	08/31/2005		EXAMINER	
Joseph B. Taphorn 8 SENIC DRIVE; HAGAN FARMS POUGHKEEPSIE, NY 12603-5521			FASTOVSKY, LEONID M	
			ART UNIT	PAPER NUMBER
			3742	

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/792,203	SCHAEFFER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Leonid M. Fastovsky	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 20 May 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 9 and 10 is/are allowed.
- 6) Claim(s) 7,8,19 is/are rejected.
- 7) Claim(s) 11-18,20 and 21 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: on page 10, lines 20-21 resistance heaters 72 and 74 are cited, but on page 11, lines 17 flat wiring or bars 72 and 74 are cited, line 27 infrared heaters 72 and 74 are cited.

Appropriate correction is required.

### ***Claim Objections***

2. Claims 8, 10-18 and 20-21 are objected to because of the following informalities: they cite articles "a" or "an" in line 1 instead of "the". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Hochstein (5,649,972).

Hochstein discloses an apparatus 10 comprising a finned infrared source 42 comprising a base 44 to be inherently heated to uncomfortable to touch high temperature (Fig. 2-4, col. 5, lines 22-45) and fins-protrusions 70 fabricated from a material having low thermal conductivity and therefore inherently comfortable to touch even though the base 44 is at uncomfortable temperature.

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5. Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Park. Park discloses an infrared sauna 10 for causing a user to sweat by direct infrared absorption on several sides by the infrared generating means 70 (Fig. 1-5) and meets the limitations of the claim.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hjortsberg (4,908,497) in view of Langensiepen (1,720,334). Hjortsberg discloses two electric heating elements 1 and 2 that adhered to a plastic inherently electrically insulating film-substrate (col. 1, lines 5-20) that can be used in heaters where the device is brought into proximity with the human body and current flows in opposite directions (Fig. 1-4, col. 2, lines 51-61). However, he does not teach an infrared heater. Langensiepen discloses infrared heater comprised of two sets of parallel electrically resistive bars "a", the corresponding bars being juxtaposed (Fig. 3) and electric conductors "d" interconnecting corresponding ends of the bars. It would have been obvious to one having ordinary skill in the art to modify Hjortsberg's invention to include the infrared heater as taught by Langensiepen as an obvious functional equivalent and have the heater powered by alternating current that produces little or no

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external electromagnetic fields (col. 2, lines 51-61) that occurs when applying 180 degrees out of phase electrical current.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hochstein.

Hochstein discloses substantially the claimed invention, but does not disclose how far fins are separated. It would have been obvious to one having ordinary skill in the art to modify Hochstein's invention to have fins separated by less than a finger width in order to prevent the user from being hurt by heat when he gets in contact with the heater.

#### ***Allowable Subject Matter***

9. Claims 11-18 and 20-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

10. Applicant's arguments with respect to claims 7-8 and 19 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonid M Fastovsky whose telephone number is 571-272-4778. The examiner can normally be reached on M-Th. 8.00 am -6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Leonid M Fastovsky  
Examiner  
Art Unit 3742

lmf



  
ROBIN O. EVANS  
PRIMARY EXAMINER  
